

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rosemary Espinal	Team: Team # 2	CCRB Case #: 201201332	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/15/2011 5:00 AM	Location of Incident: Broadway and Pine Street	Precinct: 01	18 Mo. SOL 5/15/2013	EO SOL 5/15/2013	
Date/Time CV Reported Mon, 01/30/2012 1:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 01/30/2012 1:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Joseph Hayward	00000	923936	PBBN
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Iannuzzi	08493	948048	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.LT Joseph Hayward	Force: Lt. Joseph Hayward struck § 87(2)(b) with a nightstick.	
B. Officers	Force: Officers struck § 87(2)(b) with nightsticks.	

Case Summary

On January 30, 2012, § 87(2)(b) and his attorney, § 87(2)(b) appeared before the CCRB and filed the following complaint.

On November 15, 2011, at approximately 5:00 a.m., § 87(2)(b) took part in a protest against the eviction of Occupy Wall Street from Zuccotti Park at Broadway and Pine Street in Manhattan. The following allegations resulted:

- **Allegation A – Force: Lt. Joseph Hayward struck § 87(2)(b) with a nightstick.** § 87(2)(g)

- **Allegation B – Force: Officers struck § 87(2)(b) with nightsticks.** § 87(2)(g)

This case was placed on the CCRB’s Sensitive Case List § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Victim: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on January 30, 2012. § 87(2)(b)’s attorney, § 87(2)(b) was present during the interview. On February 9, 2012, § 87(2)(b) provided additional information regarding the incident.

CCRB Testimony (encl. 6A-G)

On November 15, 2011, at approximately 5:00 a.m., § 87(2)(b) arrived at Zuccotti Park located at the intersection of Broadway and Pine Street in Manhattan, for a demonstration against the eviction of the Occupy Wall Street protest from Zuccotti Park.

Shortly after § 87(2)(b)’s arrival, the police ordered all civilians to clear the street. As § 87(2)(b) was speaking with an unidentified friend, he was pushed with a nightstick from behind. § 87(2)(b) stated, “What the fuck,” and turned around to see a line of approximately twelve uniformed police officers pushing civilians toward the sidewalk.

Lt. Joseph Hayward, identified through a photo taken by reporters at the location, struck § 87(2)(b) with a nightstick once on the left side of his head. § 87(2)(b) turned around with his back toward the officers. He was allegedly struck an additional four times with nightsticks, once in the lower back, once on the left hip, once in the back right shoulder, and once in the thigh. § 87(2)(b) did not know whether the additional strikes to his body were given by Lt. Hayward or other officers given that his back was turned toward the officers. Therefore, he only saw the first blow given by Lt. Hayward. § 87(2)(b) was also struck once while on the ground but he was not sure whether this was a kick or a strike as he did not see who struck him.

§ 87(2)(b) was handcuffed and taken to a nearby police van. He remained handcuffed for approximately 45 minutes outside of the van. The officer who handcuffed § 87(2)(b) released

him without pressing any charges. According to § 87(2)(b) the officer who handcuffed him was ordered by a superior to handcuff § 87(2)(b). § 87(2)(b) did not know the name or shield number of the officer who handcuffed him.

§ 87(2)(b) sustained a concussion and redness to the left temple. He has also been suffering from short-term memory loss, dizziness, trouble keeping his balance, problems differentiating left from right, and sleep problems. As of the date of this statement, § 87(2)(b) had not sought medical treatment, but he visited his psychiatrist.

§ 87(2)(b) (encl. 7A)

On February 9, 2012, § 87(2)(b) provided the following additional details regarding the incident: § 87(2)(b) was not given any instructions prior to being struck with a nightstick. There were other people detained at the location but § 87(2)(b) did not know any of them. The photo which allegedly showed Lt. Hayward with a nightstick in his hand was taken by a reporter but § 87(2)(b) was not sure whether there was a caption identifying the officer on the photo as Lt. Hayward. § 87(2)(b) does not have the names of any witnesses.

Attempts to Contact Civilians

§ 87(2)(b) revealed on his web page that an individual by the name of § 87(2)(b) had witnessed the incident. An online search for § 87(2)(b) yielded an entry on § 87(2)(b) that read, “§ 87(2)(b) was arrested brutally right in front of me. Thrown into fence hard and tackled while complying...for no reason. On sidewalk, not resisting.”

A Lexis Nexis search for § 87(2)(b)'s address and phone number revealed multiple listings for § 87(2)(b) in the state of New York. On February 28, 2012, the undersigned attempted to contact § 87(2)(b) at one of the numbers listed but the number was for a fax machine. Between February 28, 2012, and April 27, 2012, the undersigned placed four calls to a second number listed for § 87(2)(b) but received a continual ring; no answering machine was available to leave a message. On May 17, 2012, the undersigned attempted a third number listed but received a continual ring; no answering machine was available to leave a message.

NYPD Statement(s):

Subject Officer: LIEUTENANT JOSEPH HAYWARD

- § 87(2)(b) -old white male, 5'7" tall, 180 lbs., brown hair, brown eyes.
- On November 14, 2011, Lt. Hayward worked from 1:15 p.m. to 10:30 a.m. the following day. He was assigned to a level three mobilization to the Occupy Wall Street protest at Zuccotti Park in Manhattan. Lt. Hayward was dressed in uniform and was assigned to a marked van. He did not recall the names of the other officers who were mobilized to Zuccotti Park.

Memo Book

At 10:00 p.m., Lt. Hayward reassigned to a level three mobilization at the Occupy Wall Street protest. Lt. Hayward did not have memo book entries related to § 87(2)(b).

CCRB Statement

Lt. Joseph Hayward was interviewed at the CCRB on March 15, 2012. (encl. 13A-B)

Lt. Hayward did not recall § 87(2)(b) by name, however, after the undersigned showed Lt. Hayward § 87(2)(b)'s photo, he recognized him.

On November 15, 2011, at approximately 5:00 a.m., Lt. Hayward was posted at Broadway and Pine Street in Manhattan for the eviction of the Occupy Wall Street protest out of Zuccotti

Park. The officers told the civilians participating in the protest that they had to clear the streets surrounding the park given that the park was going to be cleaned, and that the park would reopen after it was cleaned at which point they could return. One of the civilians in the protest told the crowd through a speaker that they had choices, and asked who in the crowd wanted to stay at the location. The crowd yelled in unison that they wanted to stay. The crowd was informed that they either cleared the street or else they would be arrested.

Lt. Hayward was one of a group of officers who formed in line with their hands on both ends of their nightsticks extended along their chests, pushing the crowd off the street onto the sidewalk. Lt. Hayward described the situation as “chaotic” as multiple civilians began jumping on top of police cars that were parked at the location, climbing on top of poles, and climbing on top of ‘do not walk’ signs.

§ 87(2)(b) attempted to break the police line by coming in between the officers. He forced his way through the police line by physically pushing himself forward then got behind the police officers. Someone from the crowd threw a piece of wood, which appeared to be a door cabinet, at the officers who were formed on the line. This action caused the officers to break the line they had formed, as they separated to go grab the individuals who threw the cabinet door. Lt. Hayward did not recall whether § 87(2)(b) was one of those civilians who was climbing on top of cars, or whether he threw the door cabinet, however, he stated that the cabinet door came from the direction in which § 87(2)(b) was.

Lt. Hayward decided it was time to start arresting civilians who were being disorderly. As § 87(2)(b) attempted go forward through the police line, Lt. Hayward grabbed § 87(2)(b) by his shirt and struck him once with his nightstick by his shins. Lt. Hayward did not recall striking § 87(2)(b) in the head. Lt. Hayward did not see any other officer strike § 87(2)(b) with a nightstick, and did not recall whether any other officers assisted him in subduing § 87(2)(b).

After § 87(2)(b) was struck with the nightstick, he stated to Lt. Hayward, “Okay, Okay” and got down. Lt. Hayward instructed an officer, whom he did not recall, to place § 87(2)(b) under arrest and handcuff him. Lt. Hayward then moved on to another person, in attempts to gain control of the situation. Lt. Hayward did not know which officer eventually arrested § 87(2)(b) and did not know who PO Michael Iannuzzi, § 87(2)(b) s arresting officer, was.

Witness Officer: POLICE OFFICER MICHAEL IANNUZI

- § 87(2)(b) -old white male, 6’0” tall, 195 lbs., brown hair, brown eyes.
- On November 14, 2011, PO Iannuzzi worked from 5:30 p.m. to 9:40 a.m. the following day. At 10:00 p.m. on November 15, 2011, PO Iannuzzi was mobilized to the Occupy Wall Street protest where he remained until 9:40 a.m. PO Iannuzzi was dressed in uniform and worked with Sgt. Michael Edmonds of the 81st Precinct. PO Iannuzzi was assigned to a marked motor vehicle.

Memo Book

At 5:50 a.m., corner of Pine Street and Broadway, § 87(2)(b) DOB § 87(2)(b), 6’0”, 230 lbs., blond hair, blue eyes.

CCRB Statement

PO Michael Iannuzzi was interviewed at the CCRB on March 13, 2012. (encl. 11A-B)

§ 87(2)(g) At approximately 5:50 a.m., PO Iannuzzi was posted at the corner of Pine Street and Broadway when a supervisor directed him and other officers to clear all protesters from the streets. The officers proceeded to clear the streets, pushing several protesters from the street onto the

sidewalk. The protesters counteracted by pushing police, some threw bottles, others climbed onto light poles.

The officers ordered the protesters to step onto the sidewalk but they did not comply. They shouted they were the “ninety-nine percent” and that the officers were also part of the “ninety-nine percent.” PO Iannuzzi did not see § 87(2)(b) in the crowd.

A black male lieutenant, whose name PO Iannuzzi did not know on the scene, directed PO Iannuzzi to handcuff § 87(2)(b). PO Iannuzzi went over to where § 87(2)(b) was, facing a fence with his arms backwards, and handcuffed him. The black male lieutenant told PO Iannuzzi to escort § 87(2)(b) to a nearby truck, where all arrestees were being taken. PO Iannuzzi did not know what § 87(2)(b) was arrested for. § 87(2)(b) appeared to be alone, however, when he was handcuffed and led away to the truck, a civilian asked for his name.

As PO Iannuzzi waited in line to bring § 87(2)(b) to the truck, he commented to PO Iannuzzi that being that his father is a police officer in another state, it was weird for him to get struck by a nightstick. § 87(2)(b) did not say the name of the officer who struck him, where the officer struck him, or how many times he was struck. PO Iannuzzi did not notice any injuries or bruises on § 87(2)(b). When it was PO Iannuzzi’s turn to lodge § 87(2)(b) an officer from the legal bureau asked PO Iannuzzi what § 87(2)(b) charges were. Since PO Iannuzzi had not witnessed what § 87(2)(b) did, he told the officer that he was not sure and that he was directed by an unknown supervisor to arrest § 87(2)(b). PO Iannuzzi went to look for the lieutenant who directed him to arrest § 87(2)(b) but he did not find him. Eventually, a sergeant who was at the truck told PO Iannuzzi to release § 87(2)(b) given that they did not know the arrest charges.

PO Iannuzzi viewed the photos § 87(2)(b) provided for the incident, and he stated he did not recognize any other officer, besides the black male lieutenant in picture number two in the case file, who was standing on the right side of the photo wearing a helmet. PO Iannuzzi did not recognize the officer who was wearing a white shirt in photo number one.

PO Iannuzzi learned after the fact, that it was Lt. Joseph Hayward who directed him to arrest § 87(2)(b). PO Iannuzzi described Lt. Hayward as a black male. PO Iannuzzi did not see Lt. Hayward interact with § 87(2)(b) on the scene and that the first time he saw the lieutenant that instructed him to arrest § 87(2)(b) was when he ordered him to handcuff § 87(2)(b). PO Iannuzzi did not see any officer push or strike § 87(2)(b) with a nightstick. PO Iannuzzi did not see the black male lieutenant strike § 87(2)(b) with any type of object or baton, or asp. PO Iannuzzi did not strike § 87(2)(b) with an asp, or baton, or any other object.

NYPD Document(s)

There were no NYPD documents related to this case.

Other Evidence

Video Footage (encl. 8A)

On January 30, 2012, § 87(2)(b) provided photos and a video of the protest showing § 87(2)(b) and other civilians interacting with police. The video is one minute and sixteen seconds long.

- At 00:02, the video showed a group of police officers standing on a sidewalk alongside each other with their nightsticks in their hands, trying to block a crowd of civilians who were chanting "shame, shame," from pouring onto the streets.
- At 00:35, a commotion is heard and officers are shown pushing and ordering civilians to get back.

- At 00:44, § 87(2)(b) appears in the video as one of the civilians who gets pushed amongst the crowd onto the sidewalk and ordered to get back.
- At 00:48, after § 87(2)(b) was pushed onto the sidewalk, § 87(2)(b) turned around and defiantly confronted an officer; § 87(2)(b) placed both of his hands on the officer's chest and forcefully pushed him away.
- At 00:52, several officers surrounded § 87(2)(b) § 87(2)(b) was no longer within view after this occurred.
- At 00:59, the video showed an officer dressed in a white shirt standing amongst a group of officers who appeared to be surrounding an individual. It is not clear from the video whether the individual being surrounded is § 87(2)(b) and whether the officer wearing the white shirt is Lt. Hayward. The video did not show any civilian being struck with a nightstick.

Photos (encl. 6C-E)

Photo # 1

Photo number one shows an officer who is wearing a white shirt holding § 87(2)(b) against a fence. Due to the darkness of the photo, the officer's face is not visible. The officer had one hand over § 87(2)(b)'s right arm, which is against his chest. § 87(2)(b)'s other arm is extended along the fence. The officer has a combat stance, however, due to the darkness of the photo, it is not clear whether he is holding a nightstick in his hand.

Photos # 2, 3

Photos number two and three show PO Iannuzzi escorting § 87(2)(b) in handcuffs.

Photo # 4

Photo number four showed an officer placing § 87(2)(b) against a fence.

Photo # 5

Photo number five is a close up shot of § 87(2)(b)'s left side of the head, showing redness by his left sideburn.

Summons/Arrest for Incident and Disposition

- § 87(2)(b) was not arrested or issued any summonses for this incident.

Status of Civil Proceedings

§ 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming false arrest, false imprisonment, unlawful search, seizure, assault and battery, excessive force, intentional and negligent infliction of emotional distress, violation of rights to free speech, violation of rights to equal protection under law, negligence, negligent hiring, screening, retention, supervision, and training, and violation of civil rights. He is seeking an undetermined amount as redress. (encl. 15A-C)

Civilian(s) Criminal History

- As of May 15, 2012, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A)

Subject Officer(s) CCRB History

- Lt. Hayward has been a member of the service for 12 years and there are no substantiated CCRB allegations against him. (encl. 2A)

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b) provided Lt. Hayward's name upon filing his complaint. Lt. Hayward confirmed his involvement in the incident. Given that § 87(2)(b) did not see the additional officers who allegedly struck him with nightsticks, the allegation was pleaded to "Officers."

Investigative Findings and Recommendations

Allegation A – Force: Lt. Joseph Hayward struck § 87(2)(b) with a nightstick.

It is undisputed that Lt. Hayward struck § 87(2)(b) with a nightstick. The location on his body where § 87(2)(b) was struck is in dispute.

According to § 87(2)(b) Lt. Hayward struck him once with a nightstick on the side of the head for no apparent reason. § 87(2)(b) was not disorderly and officers did not instruct him to get back prior to being struck. § 87(2)(b) sustained redness on the left temple but did not seek medical treatment.

Lt. Hayward and PO Iannuzzi described a "chaotic" situation with multiple civilians jumping on top of police cars, street signs, and poles. A large piece of wood, which appeared to be a door cabinet, was thrown at the officers. The protesters also threw bottles at the officers.

According to Lt. Hayward, § 87(2)(b) physically pushed himself forward through the police line. As § 87(2)(b) attempted to go forward, Lt. Hayward grabbed him by his shirt and struck him once with his nightstick by the shins. Lt. Hayward did not recall striking § 87(2)(b) in the head and did not see any other officer strike § 87(2)(b) with a nightstick. After being struck, § 87(2)(b) became compliant and was taken into custody. PO Iannuzzi said he did not see any officer push or strike § 87(2)(b) with an asp.

A video § 87(2)(b) provided for the investigation showed § 87(2)(b) being swept away by a crowd of civilians onto a sidewalk. § 87(2)(b) turned around and yelled in an officer's face then forcefully pushed the officer away. Subsequently, § 87(2)(b) was surrounded by a group of officers and he was no longer within view. The video or photos did not show § 87(2)(b) being struck with a nightstick at all.

Patrol Guide Procedure 203-11, in reference to the use of force, states that an officer may use only that amount of force necessary to overcome resistance and effect an arrest. (encl. 1A-B)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Force: Officers struck § 87(2)(b) with nightsticks.

It is disputed whether unidentified officers struck § 87(2)(b) with nightsticks.

Patrol Guide Procedure 203-11, in reference to the use of force, states that an officer may use only that amount of force necessary to overcome resistance and effect an arrest. (encl. 1A-B)

According to § 87(2)(b) after Lt. Hayward struck him with his nightstick, other unidentified officers struck him approximately four times on his right shoulder, lower back, hips, and thigh. § 87(2)(b) could not see the other officers who struck him given that his back was toward them.

Lt. Hayward testified that § 87(2)(b) forced his way through the police line by pushing himself forward. As § 87(2)(b) attempted go forward through the police line, Lt. Hayward grabbed him by his shirt and struck him once by the shins with his nightstick. Lt. Hayward did not see any other officer strike § 87(2)(b) PO Iannuzzi did not strike § 87(2)(b) with a nightstick and did not see any officer push or strike § 87(2)(b)

According to Lt. Hayward, § 87(2)(b) was one of several civilians who refused to comply with the orders to stay back. The video showed § 87(2)(b) yell and forcefully push an officer after he was swept away in the crowd. The video provided did not show any officer strike § 87(2)(b) with a nightstick.

§ 87(2)(g)

§ 87(2)(g)

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date